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September 15, 2023

Honorable Michael A. Shipp, U.S.D.J.  
United States District Court  
Clarkson S. Fisher Building & US Courthouse  
402 East State Street  
Trenton, NJ 08608

Honorable Rukhsanah L. Singh, U.S.M.J.  
United States District Court  
Clarkson S. Fisher Building & US Courthouse  
402 East State Street  
Trenton, NJ 08608

***Re: Johnson & Johnson Talcum Powder Products, Marketing, Sales  
Practices and Products Liability Litigation  
Case No.: 3:16-md-02738-MAS-RLS***

Dear Judge Shipp and Judge Singh:

Pursuant to the Court's Order of September 7, 2023, the parties have met and conferred regarding the general framework and procedures for a tutorial on science and liability issues.

**The Plaintiffs' Position**

The purpose of the presentation is to educate and inform the Court through an overview of the procedural background of the litigation and the scientific, medical, and liability factual record. Judge Wolfson's *Daubert* decision, the decisions of state courts throughout the country, including the appellate decisions of the New Jersey Court of Appeals, the Missouri Court of Appeals, and the California Court of

Appeals, make clear that the preponderance of the scientific evidence supports a causal relationship between the genital use of talcum powder and ovarian cancer.

### **The Defense Position**

The main focus of this day should be on the science. The revisions to the Federal Rules make it clear that a party is not entitled to reach the jury if they don't have the science to support their claims by a preponderance of the evidence. But in the spirit of compromise, the Defendants agree that the parties may use their time as they determine best, subject to the view of Your Honor. The *Daubert* opinions referenced by the Plaintiffs deal only with questions of whether certain scientific evidence can pass over a low bar (and in some courts a very low bar). That's an issue for another day.

### **Logistics**

The parties agree that the presentations may include graphics and illustrative demonstratives to highlight areas of the presentation.

The parties agree that presentations would be made by counsel for each party. The total length of the hearing would be no more than 6 hours, a maximum of 3 hours per side. Plaintiffs would present first; Defendants would present second. Each side would have opportunity to make brief closing statements. The parties agree that the hearing be made accessible to all counsel by zoom but that videotaping or transcribing of the proceedings be prohibited. The presentations may not be used for any purpose in any subsequent proceedings including trials.

The following subject matter may be included in the presentations: a) history and overview of current litigation; b) talcum powder products; c) ovarian cancer; d) scientific evidence; and e) liability evidence. Each side may make its own decision as to how to use its time.

### **Scheduling**

The parties are unable to reach consensus on a date before year's end. Plaintiffs have proposed the following dates: November 16-17, November 28-31, and December 11-14. Defendants' key people are not available on those dates. Defendants have proposed any day the week of October 16 or October 26 or any day the week of December 18 or in January. Plaintiffs' key people are not available on the dates in

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October or the week of December 18<sup>th</sup>. Plaintiffs believe the hearing should take place before the end of the year. The parties defer to the Court's calendar.

Thank you for the Court's consideration.

Respectfully submitted,

/s/ Michelle A. Parfitt  
Co-Lead Counsel  
Plaintiffs' Steering Committee

/s/ P. Leigh O'Dell  
Co-Lead Counsel  
Plaintiffs' Steering Committee

/s/ Susan M. Sharko  
Counsel  
Johnson & Johnson Defendants

cc: Hon. Joel Schneider, U.S.M.J. (ret.) (via email)  
All Counsel (via ECF)